

RECEIVED  
CENTRAL FAX CENTER

FEB 27 2007

**FAX COVER SHEET****PLEASE CONFIRM RECEIPT OF THIS FACSIMILE**

Attention:	MAIL STOP APPEAL BRIEF - PATENTS Group Art Unit: 2612 Examiner: LU, Shirley	Fax: (571) 273-8300
UNITED STATES PATENT AND TRADEMARK OFFICE		Phone: (571) 272-8546
Pages:	Cover + 4 = 5	Date: February 27, 2007
From:	Georgann S. Grunebach	Fax: (310) 964-0941
	Assistant General Counsel	Phone: (310) 964-4615

The information contained in this facsimile is confidential and may also contain privileged attorney-client information or work product. The information is intended only for the use of the individual or entity to which it is addressed. If you are not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any use, dissemination, distribution or copying of this communication is strictly prohibited. If you have received the facsimile in error, please immediately notify us by telephone, and return the original message to us at the address below via the U.S. Postal Service. Thank you.

**CERTIFICATION OF FACSIMILE TRANSMISSION UNDER 37 CFR 1.8**

I hereby certify that this correspondence identified below is being facsimile transmitted to (571) 273-8300 (Centralized Facsimile Number), addressed to: Mail Stop Appeal Brief - Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on February 27, 2007.

A handwritten signature of Georgann S. Grunebach in black ink.

Georgann S. Grunebach, Reg. No. 33,179  
Telephone No. (310) 964-4615 (Printed Name of Person Signing Certificate)

February 27, 2007  
(Date of Signature)

**Attention: Commissioner for Patents**

**Attorney Docket No. PD-201169**

Please find attached Re:

Serial No.: 10/010,486

Filing Date: December 7, 2001

- REPLY BRIEF IN RESPONSE TO THE EXAMINER'S ANSWER DATED JANUARY 25, 2007 (4 pages)

If you do not receive all pages, or pages are not clear, please call Karen Lum at (310) 964-0735.

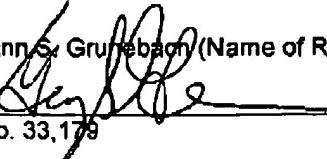
The DirecTV Group, Inc., CA/LA1/A109, P. O. Box 956, El Segundo CA 90245

FEB 27 2007

## CERTIFICATE OF FACSIMILE TRANSMISSION UNDER 37 CFR 1.8

I hereby certify that this correspondence is being facsimile transmitted to (571)-273-8300 (Centralized Facsimile Number), addressed to: Mail Stop Appeal Brief-Patents, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450, on February 27, 2007.  
(date of facsimile transmission)

Georgann C. Grunbaum (Name of Registered Representative)

  
Reg. No. 33,179

(Signature) February 27, 2007 (Date of Signature)

Customer Number 020991

*Patent*  
PD-201169

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In Re Application of:

William T. Frantz

Serial No. 10/010,486 Group Art Unit: 2612

Filed: 12/07/2001 Examiner: Shirley Lu

For: SYSTEM, METHOD AND APPARATUS TO DELIVER  
GUARANTEED ADVERTISING

**REPLY BRIEF**

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In response to the Examiner's Answer dated January 25, 2007, please enter the following remarks.

FEB 27 2007

U.S.S.N. 10/010,486

2

PD-201169

**REMARKS**

The Examiner's response to the Appellants' arguments begins on page 7 of the Examiner's Answer. In the last paragraph of page 7, the Examiner states:

"In response to appellant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., 'presence of the user') are not recited in the rejected claim(s)."

Appellants respectfully submit that Claim 1 includes a "sensor generating a using message indicative of a subscriber using the broadcast programming wherein said processor accesses said stored audio and/or video message is for display in place of the broadcast programming being currently used by the subscribers in response to the using message. In the Appellants' argument, users and subscribers are one in the same. The subscribers are the users of the communication system for delivering audio and/or video messages. On the top of page 8, the Examiner's misquotes or selectively quotes the Zigmond reference. The Board and the Appellants are referred to column 9, lines 20-40, the first sentence of which is particularly insightful. Appellants feel that it is important to read the entire paragraph which states:

"Fig. 4 further illustrates an optional aspect of the invention whereby viewer responses to the selected advertisements are compiled and periodically reported. In this embodiment, the ad insertion device 60 monitors actions of the viewer before, during or after display of the selected advertisement. Examples of such actions include channel changes during display of the selected advertisement, requests by the viewer for additional information, feedback provided by the viewer in response to the advertisement, and the like. In a further example, the user may be presented with multiple ads and asked to select one for viewing. Information about which ad has been selected may also be compiled. Such interaction between the viewer of the advertisement and the home entertainment system allows advertisers to more effectively target interested viewers or to test a proposed advertisement on a limited segment of the viewing population while receiving valuable feedback relating to the popularity or effectiveness of the advertisement."

Appellants respectfully submit that the quotation from this paragraph illustrates the Examiner's lack of understanding of the present invention. Claim 1 specifically recites a sensor generating a using message indicative of a subscriber using the broadcast programming. Claim 1 also recites that the processor accesses the stored audio and/or video messages for display in place of the broadcast programming being currently used by the subscribers in response to the using message. It is clear that the passage from the Zigmond reference is used to monitor the

U.S.S.N. 10/010,486

3

PD-201169

actions of a viewer before, during, or after the display of the selected advertisement. The reaction to the advertisement is formed by comparing the actions before and after. In claim 1, a processor accesses stored audio and/or video messages for display in place of the broadcast programming in response to the using message. That is, the present invention allows the advertisement to be placed so that the user receives the targeted advertising when using the apparatus. That way, the advertisements are displayed when the user is using the device and not if the user has walked away. The Zigmond reference does not teach or suggest solving the problem of displaying when the user is not present. Furthermore, it's the monitoring of the actions that are monitoring, but the advertisement in response to the using message is not taught or suggested in this passage in Zigmond in column 9, lines 20-40. Therefore, Appellants respectfully submit that this rejection should be reversed.

In the second full paragraph of page 9, the Examiner specifically states that Zigmond does not disclose packetized signals. This is in reference to claim 4 which specifically recites "an uplink facility for digitally encoding and multiplexing said audio and/or video messages into a packetized data stream, and for encoding and modulating said data packet into a suitable frequency band for reception." The Examiner points to column 17, line 50 through column 18, line 18. Appellants admit that a satellite broadcasting system is taught in this passage. However, there is no teaching or suggestion for a packet despite the Examiner's logic of why there is a packet. The Examiner states "a packet is a unit of information transmitted as a whole from one device to another on a network." Appellants respectfully submit that this clearly illustrates the Examiner's lack of understanding of what a packet is. A packet is a portion less than a whole. Appellants respectfully submit that there is no teaching or suggestion for a packet in column 17, lines 15-18. Therefore, claim 4 and corresponding claim 11 should be allowable for the same reasons.

It should also be noted that claims 9 and 10 stand or fall together with claim 8 as they correspond to claims 2 and 3.

Appellants, therefore, respectfully request the Board to reverse the Examiner's position with respect to each and every claim of the present application in view of the above remarks and the Appeal Brief. Appellants thank the Board for their consideration. Should the Board have any questions regarding this matter, the Board is directed to contact the undersigned directly.

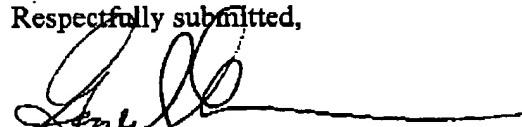
U.S.S.N. 10/010,486

4

PD-201169

Please charge any fees required in the filing of this appeal to Deposit Account 50-0383.

Respectfully submitted,

  
Georgann S. Grunebach, Reg. No. 33,179  
Attorney for Appellants

Dated: February 27, 2007

The DIRECTV Group, Inc.  
CA/LA1/A109  
2230 East Imperial Highway  
P.O. Box 956  
El Segundo, CA 90245  
Telephone: (310) 964-4615